



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 21

Daniel P. Morris
IBM Corporation
Intellectual Property Law Department
P. O. Box 218
Yorktown Heights, NY 10598

COPY MAILED

JAN 06 2003

OFFICE OF PETITIONS

In re Application of
Marie Angelopoulos, et al.
Application No. 09/036,458
Filed: March 6, 1998
Attorney Docket No. YO998-086

:
:
:
:
:
:
:

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 31, 2002, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item (1).

A final Office action was mailed to applicant on February 8, 2000, setting a three month shortened statutory period within which to submit a reply. Extensions of time under the provisions of 37 CFR 1.136(a) were permitted. As such, petitioner submitted an amendment on May 12, 2000, which resulted in the mailing of an advisory action from the examiner on May 24, 2000. Petitioner filed a Notice of Appeal and one month extension of time on June 26, 2000

and then filed an Appeal Brief on August 15, 2000. A Notice of Abandonment was mailed petitioner on January 12, 2001 indicating that the application became abandoned for failure to pay the required fee for Notice of Appeal filed on June 26, 2000. Accordingly, petitioner has filed the instant petition to revive.

Petitioner states in the instant petition that "the application was appealed June 26, 2000 with the payment of the required fee. An Appeal Brief was timely filed with an authorization to charge the fee that is required to accompany the filing of the brief. Despite these proper actions, Applicants' attorney received a Notice of Abandonment for failure to file the proper fee." Petitioner further states, "Applicants attorney telephone the clerk in the Group handling this case and explained that he had transmitted and authorized the appropriate fees...and even telefaxed a copy of the cancelled check to the clerk to verify that the fees had been paid."

A thorough review of the file record discloses that petitioner did not pay the fee for filing the Notice of Appeal. A copy of the Notice of Appeal, with a stamp from the U. S. Patent and Trademark Office (USPTO) indicating that the check for the Notice of Appeal was not received, is attached herewith. Additionally, the file record does not contain an authorization from petitioner to charge the Notice of Appeal fee nor is there a general authorization from petitioner to charge any additional fees. Petitioner also states that "an authorization to charge my credit card accompanies this petition." Again, the authorization to charge the credit card is missing from the instant petition as well. Accordingly, the application is properly abandoned. If petitioner is able to provide evidence that the Notice of Appeal fee was, in fact, timely paid, then submission of such evidence is required. Otherwise, petitioner must pay the Notice of Appeal fee in the amount of \$320 in order to revive this application.

It is also noted that petitioner does not have authority to prosecute this case and the USPTO erred in changing the correspondence address of this application. There is no indication that the person signing the instant petition was ever given power of attorney or authorization of agent to prosecute this application. In view thereof, an appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the original address of record until such time as appropriate instructions are received to the contrary.

Further correspondence with respect to this matter should be addressed as follows:

By Express Mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By First Class Mail: United States Patent and Trademark Office
P. O. Box 2327, Mail Stop DAC
Arlington, VA 22202

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-3475.



Marianne E. Morgan
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Copy of Notice of Appeal received June 26, 2000

Cc: Thomas A. Beck
26 Rockledge Lane
New Milford, CT 06776